

E-Filed 7/11/11

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

MARIE GAUDIN,

No. C 11-1663 RS

Plaintiff,

v.

**ORDER REQUESTING FURTHER
BRIEFING AND CONTINUING
HEARING**

SAXON MORTGAGE SERVICES, INC.

Defendants.

Defendant's pending motion to dismiss argues, among other things, that this action is barred as a matter of *res judicata* by the confirmation of plaintiff's Chapter 13 Bankruptcy plan and/or that plaintiff is judicially estopped from pursuing these claims as the result of an alleged failure to list them on her bankruptcy schedules in a timely manner. Whether or not those arguments have merit, plaintiff's bankruptcy filing also implicates the issue of her standing to pursue this action.

When a debtor declares bankruptcy, "all the 'legal or equitable interests' he had in his property became the property of the bankruptcy estate and are represented by the bankruptcy trustee. . . . Causes of action are among such legal or equitable interests." *Turner v. Cook*, 362 F.3d 1219, 1225-1226 (9th Cir. 2004). Absent abandonment of the claims by the trustee, a plaintiff in bankruptcy lacks prudential standing to pursue claims in his own name in another action because he or she is no longer the "real party in interest." See *In re Phenylpropanolamine Products Liability Litigation*, 2006 WL 2136722, *2 (W.D.Wash. 2006). An issue of prudential standing may properly

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1 be raised *sua sponte*, and is one of the “threshold determinants of the propriety of judicial
2 intervention.” *City of Los Angeles v. County of Kern*, 581 F.3d 841, 845-846. (quoting *Warth v.*
3 *Seldin*, 422 U.S. 490, 518 (1975)). While plaintiff asserts that these claims arose post-petition, it is
4 not immediately apparent that these principles would necessarily be rendered inapplicable, given the
5 ongoing administration of the estate under the Chapter 13 plan.

6 Accordingly, as part of its reply in support of the motion to dismiss, defendant shall address
7 the issue of plaintiff’s standing, and may have up to an additional three pages to do so. Within
8 seven days after defendant files its reply, plaintiff may file a response, limited solely to the standing
9 issue, and not to exceed five pages. The hearing on the motion to dismiss is hereby continued to
10 August 11, 2011 at 1:30 p.m.

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12 IT IS SO ORDERED.

13 Dated: 7/8/11



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15 RICHARD SEEBORG
16 UNITED STATES DISTRICT JUDGE
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